



December 10, 2003

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Costa Mesa  
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Director  
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Water District

**DANA M. SMITH**  
Executive Officer

**TO:** Local Agency Formation Commission

**FROM:** Executive Officer  
Senior Project Manager

**SUBJECT:** Amendment to Local CEQA Guidelines for MSRs and  
Spheres of Influence

As LAFCO prepares for the formal implementation of municipal service reviews (MSRs) in Orange County, the Commission should consider its responsibilities to comply with the California Environmental Quality Act (CEQA) and what the thresholds are for the application of CEQA within the MSR process. Within the MSR law, LAFCO is required to take two actions:

1. Make nine determinations about present and future opportunities, constraints, and needs for services, infrastructure, and governance
2. Update all local agency spheres of influence

State law and case law both affirm that actions taken or determinations made by LAFCO to amend a local agency's sphere of influence are considered "projects" for the purposes of CEQA and require environmental review. MSRs, however, can be more accurately defined as "feasibility or planning studies" that are statutorily exempt from CEQA under Section 15262 of the State CEQA Guidelines. Section 15262 reads:

"A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or Negative Declaration but does require consideration of environmental factors. This section does not apply to the adoption of a plan that will have a legally binding effect on later activities."

The MSR law itself considers MSRs to be studies for possible future actions. Government Code Section 56430(a) requires LAFCO to conduct MSRs "in order to prepare and to update spheres of influence." In addition, the nine required determinations are not considered legal findings "that will have a legally binding effect on later activities."

On May 14, 2003, the Commission adopted an update to its “Local Guidelines for Implementing CEQA (2003).” Staff is recommending that the Commission amend those local guidelines to clarify that MSRs are considered “feasibility or planning studies” that are statutorily exempt from CEQA and establish thresholds to clarify that CEQA is not triggered unless the Commission takes action or makes determinations to amend a local agency’s sphere of influence. A draft resolution is attached for review and consideration.

### **RECOMMENDATION**

Staff recommends that the Commission:

1. Adopt the attached resolution amending LAFCO’s “Local Guidelines for Implementing CEQA (2003)” to clarify that:
  - a. MSRs, including the nine determinations required by Government Code Section 56430, are considered “feasibility or planning studies” that are statutorily exempt from CEQA in accordance with Section 15262 of the State CEQA Guidelines.
  - b. An action taken or determination made by the Commission to amend a local agency’s sphere of influence, including the four determinations required by Government Code Section 56425, is considered a “project” for purposes of CEQA and require environmental review.

Respectfully submitted,

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DANA M. SMITH

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KENNETH G. LEE

Attachment:

1. Draft Resolution Amending Local CEQA Guidelines



RESOLUTION NO. \_\_\_\_\_

CHAIR  
**ARLENE SCHAFFER**  
Director  
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**A RESOLUTION OF THE ORANGE COUNTY LOCAL AGENCY FORMATION COMMISSION AMENDING LOCAL GUIDELINES FOR IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (PUB. RESOURCES CODE §§ 21000 ET SEQ.)**

**RANDAL J. BRESSETTE**  
Councilmember  
City of Laguna Hills

**WHEREAS**, the California Legislature has enacted the California Environmental Quality Act ("CEQA") (Pub. Resources Code, §§ 21000 et seq.) and the

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State CEQA Guidelines (Cal. Code of Regs, tit. 14, §§ 15000 et seq.) and the California courts have interpreted specific provisions of CEQA;

**PETER HERZOG**  
Councilmember  
City of Lake Forest

**SUSAN WILSON**  
Representative of  
General Public

**WHEREAS**, Section 21082 of CEQA requires all public agencies to adopt objectives, criteria and procedures for the evaluation of public and private projects

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Director  
Irvine Ranch Water  
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undertaken or approved by such public agencies, and the preparation, if required, of environmental impact reports and negative declarations in connection with that

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evaluation; and

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**RHONDA MCCUNE**  
Representative of  
General Public

**WHEREAS**, on May 13, 2003 the Orange County Local Agency Formation Commission ("Commission") adopted local guidelines for implementing CEQA that are

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consistent with the current provisions and interpretations of CEQA; and

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**CHARLEY WILSON**  
Director  
Santa Margarita  
Water District

**WHEREAS**, the Commission desires to amend the local guidelines for implementing CEQA to clarify that municipal service reviews ("MSRs"), including the adoption

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Executive Officer

of the nine determinations required under subdivision (a) of Government Code Section 56430, are considered feasibility or planning studies that are statutorily exempt from CEQA and that an

action taken or determination made by the Orange County Local Agency Formation Commission (“Commission”) to amend a local agency’s sphere of influence, including the adoption of the four determinations required under subdivision (e) of Government Code Section 56425, are considered “projects” for the purposes of CEQA; and

**NOW, THEREFORE**, the Orange County Local Agency Formation Commission (“Commission”) hereby resolves as follows:

**SECTION 1.** The Commission amends Section 3.09 of the “Local Guidelines for Implementing the California Environmental Quality Act (2003),” to read as follows:

**“3.09      FEASIBILITY AND PLANNING STUDIES.**

A project which involves only feasibility or planning studies for possible future actions which the Commission has not yet approved, adopted or funded, including municipal service reviews (“MSRs”) and the adoption of the nine determinations required under subdivision (a) of Government Code Section 56430, shall be exempt from CEQA. An action taken or determination made by the Commission to amend a local agency’s sphere of influence, including the adoption of the four determinations required under subdivision (e) of Government Code Section 56425, shall be considered a “project” as defined in Guidelines Section 10.41.”

**SECTION 2.** A copy of the Local Guidelines for Implementing the California Environmental Quality Act (2003) as amended is on file at the offices of the Commission and is available for inspection by the public.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

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Arlene Schafer, Chairman  
Orange County Local Agency Formation Commission

ATTEST:

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Danielle M. Ball  
Commission Clerk